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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,280	12/03/2003	Karl-Otto Werz	3041.001	7131

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EXAMINER

BASICHAS, ALFRED

ART UNIT PAPER NUMBER

3749

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/728,280	Applicant(s) WERZ, KARL-OTTO	
	Examiner Alfred Basichas	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/3/03</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 1-10 are objected to because of the following informalities: the term "characterized in that" is inappropriate in US practice and must be changed to --comprising-- or --wherein--. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1, 3, and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howell (1,243,605) in view of Miller (4,124,016). Howell discloses a wood burning

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oven including substantially all of the claimed limitations including, among other things, an individual baking chambers 25,26,27, a fire box with an ash chamber 5 and grate 4, and "suitable doors are provided whereby access may be had to the fire-box and to the ash pit." Nevertheless, Howell does not specifically recite the use of pivoting flaps.

Miller teaches the use of pivoting flaps 16,25 for providing greater control of the flow of the gases within and around the cooking chamber, thus providing for more thorough and even cooking of items regardless of size (i.e., loaves or rolls). In this way Miller provides for greater versatility. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated the pivoting flaps of Miller into the invention disclosed by Howell, so as to provide for more thorough and even cooking and greater versatility.

5. Claims 1, 2, and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stich (DE 40 10 203) in view of Miller (4,124,016). Stich discloses a wood burning oven including substantially all of the claimed limitations including, among other things, an individual baking chambers, a firebox, and a firebrick stone and tiles (see at least applicants disclosure). Nevertheless, Howell does not specifically recite the use of pivoting flaps. Miller teaches the use of pivoting flaps 16,25 for providing greater control of the flow of the gases within and around the cooking chamber, thus providing for more thorough and even cooking of items regardless of size (i.e., loaves or rolls). In this way Miller provides for greater versatility. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to have incorporated the pivoting flaps

of Miller into the invention disclosed by Stich, so as to provide for more thorough and even cooking and greater versatility.

6. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howell (1,243,605) in view of Miller (4,124,016) or Stich (DE 40 10 203) in view of Miller (4,124,016), and further in view of Parks (5,129,384). The respective combinations of Howell and Stich in view of Miller disclose substantially all of the claimed limitations as discussed above, but do not specifically recite the use of steam and pipes as recited in the claims of the instant application. Parks teaches a baking oven including the use of steam, which provides moisture to the air to aid in the baking process (col. 3, lines 45-60). Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the use of steam as taught by Parks into the invention disclosed by the above combinations, so as to aid in the baking process.

7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Howell (1,243,605) in view of Miller (4,124,016) or Stich (DE 40 10 203) in view of Miller (4,124,016). These combinations obviate substantially all of the claimed limitations, but do not specifically disclose the claimed material or arrangement.

a. The particular material used is simply a matter dependent on availability and cost. This material is well within the knowledge and ability of one of ordinary skill in the art. Further, applicant has failed to particularly point out any criticality that would require this material over other such materials also well known for use as ovens. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the claimed material into

the invention disclosed by the above combinations, so as to satisfy considerations of availability and cost.

b. The claimed arrangement of the lever is an obvious modification based on design choice, and depends on the availability of space and convenience in use. In view of the absence of criticality for this particular design, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate it into the invention disclosed by the above combinations, so as to provide for spatial considerations.

Prior Art

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Basichas whose telephone number is 571 272 4871. The examiner can normally be reached on Monday through Friday during regular business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on 571 272 4877. The fax phone numbers for the organization where this application or proceeding is assigned are 703 872 9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center telephone number is 571 272 3700.

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June 22, 2005



Alfred Basicas
Primary Examiner